In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1020

XENIA D. MAGBANUA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner is a nurse who came to the United States from the Philippines in March 1962 as a participant in an exchange program under the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535). After going to Canada in 1964, she reentered the United States in November 1965 and has since remained here. Petitioner was ordered deported on the ground that she had failed to comply with the conditions of her non-immigrant status. At the deportation hearing, petitioner admitted her deportability but applied for adjustment of status, presenting a release by the Philippine Government of her commitment to that government. The Special Inquiry Officer and the Board of Immigration Appeals

246-468—67

held that petitioner was ineligible for such relief under the provisions of Section 212(e) of the Immigration and Nationality Act, 8 U.S.C. 1182(e). The court of appeals affirmed on the authority of its decision in *Carriaga* v. *Immigration and Naturalization Service,* decided November 2, 1966, pending on petition for a writ of certiorari, No. 970, this Term. The issue which petitioner raises is identical to that in No. 970—*i.e.,* whether the restriction of Section 212(e), which prohibits exchange students from applying for immigrant visas or permanent residence until the expiration of two years of residence in a foreign country after departure from the United States, applies when the country from which the exchange student has entered has executed a release from any commitments to that country. For the reasons stated in our brief in opposition in No. 970, we believe that the decision of the court below was correct and that no further review is warranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FEBRUARY 1967.